

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

JAMES LESHAWN BOONE,

Plaintiff,

v.

ELDA OLIVEROS, et al.,

Defendants.

Case No. 20-cv-01473-RMI

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a state prisoner, filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis and he has consented to the jurisdiction of a Magistrate Judge.

DISCUSSION

Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a

formulaic recitation of the elements of a cause of action will not do Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Legal Claims

Plaintiff alleges that defendants retaliated against him for his protected conduct by improperly opening his legal mail.

The inspection for contraband of non-legal mail does not violate a prisoner’s constitutional rights. *See Witherow v. Paff*, 52 F.3d at 264, 265-66 (9th Cir. 1995) (upholding inspection of outgoing mail); *Smith v. Boyd*, 945 F.2d 1041, 1043 (8th Cir. 1991) (upholding inspection of incoming mail); *Gaines v. Lane*, 790 F.2d 1299, 1304 (7th Cir. 1986) (upholding inspection of outgoing and incoming mail). Neither the Supreme Court nor the Ninth Circuit has determined whether prison officials are entitled to read inmates’ outgoing and incoming non-legal mail.

Prison officials may institute procedures for inspecting “legal mail,” e.g., mail sent between attorneys and prisoners, *see Wolff v. McDonnell*, 418 U.S. 539, 576-77 (1974) (incoming mail from attorneys), and mail sent from prisoners to the courts, *see Royse v. Superior Court*, 779 F.2d 573, 574-75 (9th Cir. 1986) (outgoing mail to court).¹ However, “prisoners have a protected

¹ Mail from the courts, as contrasted to mail from a prisoner’s lawyer, is not “legal mail.” *See Keenan v. Hall*, 83 F.3d 1083, 1094 (9th Cir. 1996), *amended*, 135 F.3d 1318 (9th Cir. 1998).

1 First Amendment interest in having properly marked legal mail opened only in their presence.”
2 *Hayes v. Idaho Correctional Center*, 849 F.3d 1204, 1211 (9th Cir. 2017); *see also O’Keefe v. Van*
3 *Boening*, 82 F.3d 322, 325 (9th Cir. 1996) (the opening and inspecting of “legal mail” outside the
4 presence of the prisoner may have an impermissible “chilling” effect on the constitutional right to
5 petition the government). The Sixth Amendment also protects the right of a prisoner to be present
6 while legal mail relating to criminal proceedings is opened. *Mangiaracina v. Penzone*, 849 F.3d
7 1191, 1195 (9th Cir. 2017). A plaintiff need not allege a longstanding practice of having his mail
8 opened outside his presence in order to state a claim for relief. *Hayes*, 849 F.3d at 1218 (allegation
9 that protected mail was opened outside plaintiff’s presence on two separate occasions sufficient to
10 state First Amendment claim); *Mangiaracina*, 849 F.3d at 1202 (absence of a clear pattern beyond
11 two incidents of mail opening did not preclude Sixth Amendment relief). Nor is a plaintiff
12 required to show any actual injury beyond the violation itself. *Hayes*, 849 F.3d at 1212. If prison
13 officials open legal mail outside a prisoner’s presence, they must establish that legitimate
14 penological interests justify the policy or practice. *Hayes*, 849 F.3d at 1213; *see also O’Keefe*, 82
15 F.3d at 327 (mail policy that allows prison mailroom employees to open and read grievances sent
16 by prisoners to state agencies outside prisoners’ presence reasonable means to further legitimate
17 penological interests).

18 “Within the prison context, a viable claim of First Amendment retaliation entails five basic
19 elements: (1) An assertion that a state actor took some adverse action against an inmate (2)
20 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
21 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate
22 correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted);
23 *accord Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995) (prisoner suing prison officials under §
24 1983 for retaliation must allege that he was retaliated against for exercising his constitutional
25 rights and that the retaliatory action did not advance legitimate penological goals, such as
26 preserving institutional order and discipline). The prisoner must show that the type of activity he
27 was engaged in was constitutionally protected, that the protected conduct was a substantial or
28 motivating factor for the alleged retaliatory action, and that the retaliatory action advanced no

legitimate penological interest. *Hines v. Gomez*, 108 F.3d 265, 267-68 (9th Cir. 1997) (inferring retaliatory motive from circumstantial evidence).

“In a § 1983 or a *Bivens* action – where masters do not answer for the torts of their servants – the term ‘supervisory liability’ is a misnomer. Absent vicarious liability, each Government official, his or her title notwithstanding, is only liable for his or her own misconduct.” *Iqbal*, 556 U.S. at 677 (finding under *Twombly*, 550 U.S. at 544, and Rule 8 of the Federal Rules of Civil Procedure, that complainant-detainee in a *Bivens* action failed to plead sufficient facts “plausibly showing” that top federal officials “purposely adopted a policy of classifying post-September-11 detainees as ‘of high interest’ because of their race, religion, or national origin” over more likely and non-discriminatory explanations).

A supervisor may be liable under Section 1983 upon a showing of (1) personal involvement in the constitutional deprivation or (2) a sufficient causal connection between the supervisor’s wrongful conduct and the constitutional violation. *Henry A. v. Willden*, 678 F.3d 991, 1003-04 (9th Cir. 2012). Even if a supervisory official is not directly involved in the allegedly unconstitutional conduct, “[a] supervisor can be liable in this individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous indifference to the rights of others.” *Starr v. Baca*, 652 F.3d 1202, 1208 (9th Cir. 2011) (citation omitted). The claim that a supervisory official “knew of unconstitutional conditions and ‘culpable actions of his subordinates’ but failed to act amounts to ‘acquiescence in the unconstitutional conduct of his subordinates’ and is ‘sufficient to state a claim of supervisory liability.’” *Keates v. Koile*, 883 F.3d 1228, 1243 (9th Cir. 2018) (quoting *Starr*, 652 F.3d at 1208) (finding that conclusory allegations that supervisor promulgated unconstitutional procedures which authorized unconstitutional conduct of subordinates do not suffice to state a claim of supervisory liability).

Plaintiff alleges that his legal mail was opened out of his presence. Compl. at 7. While Plaintiff identifies three defendants in this case, he fails to describe their specific actions and how each defendant participated in the violation of his constitutional rights. In addition, many of the instances involve opening of mail from courts. *Id.* at 6. As noted above, this fails to state a federal

1 claim because mail sent from the court to Plaintiff is not legal mail. *See Keenan*, 83 F.3d at 1094.
2 Plaintiff should discuss instances of improper handling of legal mail as set forth in the legal
3 standards above. Plaintiff also fails to specifically describe how defendants engaged in this
4 conduct in retaliation for his protected conduct. Thus, the complaint is due to be dismissed, and
5 Plaintiff is instructed to provide more information and describe the specific actions of each
6 defendant. To the extent any defendants are supervisors, Plaintiff must still describe their personal
7 involvement.

8 CONCLUSION

9 The complaint is **DISMISSED** with leave to amend in accordance with the standards set
10 forth above. The amended complaint must be filed within **twenty-eight (28) days** of the date this
11 order is filed and must include the caption and civil case number used in this order and the words
12 AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces
13 the original complaint, Plaintiff must include in it all the claims he wishes to present. *See Ferdik v.*
14 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original
15 complaint by reference. Failure to amend within the designated time will result in the dismissal of
16 this case.

17 It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed
18 of any change of address by filing a separate paper with the clerk headed "Notice of Change of
19 Address," and must comply with the court's orders in a timely fashion. Failure to do so may result
20 in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure
21 41(b).

22 **IT IS SO ORDERED.**

23 Dated: March 30, 2020

24
25 
26 ROBERT M. ILLMAN
27 United States Magistrate Judge
28